



California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by Thomson West.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (hereinafter referred to as "Department") is proposing to take the action described in the Informative Digest. A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than **15 days prior to the close of the written comment period**. Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this Notice as the contact person **on or before 5:00 p.m., November 6, 2006**. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 407, 32921 and 34261.5 of the Food and Agricultural Code, and to implement, interpret or make specific sections 32921, 35161, 35162, 35163, 35164, 35166, 35167, 35168, 35169, 35170, 35171, 35784, 35231, 38181, 38191 and 39211 of said code, the Department is considering amending Articles 13, 14, 14.5, 14.6, 14.7, 14.8 and 21 of Chapter 1, Division 2, Title 3, of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Milk and Dairy Food Safety Branch
Personal Licenses; Fluid Milk Composition Testing Methods:

Existing Law, Food and Agricultural Code sections 32921, 34261.5, 35161, 35162, 35163, 35164, 35166, 35167, 35168, 35169, 35170, 35171, 35784, 35231, 38181, 38191 and 39211 set forth the requirements for the application, examination and licensure for a pasteurizer's license, tester's license, sampler's and weigher's license, technician's license, and the requirements to test fluid milk composition.

To implement the above-referenced statutes, the Department has in place regulations under Articles 13, 14, 14.5, 14.6, 14.7, 14.8 and 21 of Chapter 1, Division 2, Title 3, of the California Code of Regulations.

This proposal updates these regulations to clarify the application forms and requirements for persons applying for examination and licensure for processing milk or milk products in California. This proposal also updates the fluid milk compositional testing standards initiated (in part) by a petition received from the Dairy Institute of California dated October 24, 2002.

This proposal also makes nonsubstantive wording, grammatical, and organizational changes for clarity purposes.

COMPARABLE FEDERAL REGULATIONS

There are no comparable federal regulations for persons applying for examination and licensure in California to process milk or milk products.

There are comparable federal regulations in 21 CFR (2005) Part 131 pertaining to standards of identity for milk and cream.

The Department, by regulation, may adopt standards for California for the testing of milk or cream pursuant to Food and Agricultural Code sections 34231 and 34261.5. Pursuant to Food and Agricultural Code section 32921, the standards for testing methodology for milk and cream are consistent with standards utilized by the U.S. Food and Drug Administration and the United States Department of Agriculture. The standards utilized by both state and federal governments are specified in the 17th Edition of the Standard Methods for the Examination of Dairy Products and the 18th Edition of the Official Methods of Analysis of the Association of Official Analytical Chemists International, which are incorporated by reference in this proposal.

FISCAL IMPACT STATEMENTS

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies:
None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Department has made an initial determination that this proposed regulatory action would not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. The following compliance requirements, as amended by this proposal, are projected to result from the proposed action:

- (1) Paperwork: Application forms are required for persons applying for licensure as a pasteurizer operator, tester, sampler and weigher, or technician. A detailed list, including the form numbers, is included in the rulemaking file. Application fees are assessed pursuant to Food and Agricultural Code 35231.
- (2) Reports and records: Licensed technicians are required to maintain Bacteriological Record Sheets and laboratories are required to maintain Milk and Cream Test Records. Record keeping is a standard business practice and therefore the Department does not believe this existing requirement will impose any adverse economic impact upon businesses.

In making these determinations, the Department has not considered alternatives that would lessen any adverse economic impact on businesses and invites the public to submit such proposals during the written comment period. Submissions may include the following considerations:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- The consolidation or simplification of compliance and reporting requirements for businesses.
- The use of performance standards rather than prescriptive standards.
- Exemption or partial exemption from the regulatory requirements for businesses.

Impact on Jobs/New Businesses: The Department has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.

Cost Impacts on Private Persons or Entities: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The following compliance requirements as

amended by this proposal are projected to result from the proposed action:

- (1) Paperwork: Application forms are required for persons applying for licensure as a pasteurizer operator, tester, sampler and weigher, or technician. A detailed list, including the form numbers, is included in the rulemaking file. Application fees are assessed pursuant to Food and Agricultural Code 35231.
- (2) Reports and records: Licensed technicians are required to maintain Bacteriological Record Sheets and laboratories are required to maintain Milk and Cream Test Records. Record keeping is a standard business practice and therefore the Department does not believe this existing requirement will impose any adverse economic impact upon businesses.

Effect on Housing Costs: None

Finding of Necessity for Report: The Department finds that it is necessary for the health, safety, and general welfare of the people of the state that this regulation requiring a report apply to businesses.

EFFECT ON SMALL BUSINESS

The Department has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing (if a hearing is requested from the public), or during the public comment period.

INITIAL STATEMENT OF REASONS

The Department has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all the information upon which the proposal is based, may be

obtained at the hearing or prior to the hearing (if a hearing is requested) or during the public comment period upon request from the Department of Food and Agriculture, 1220 N Street, Room A-170, Sacramento, California 95814.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact persons named below.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations are to be addressed to the following:

Name: Kristen Dahl, Dairy Program
Coordinator
Address: Department of Food and
Agriculture
Milk and Dairy Food Safety
Branch
1220 N Street, Room A-170
Sacramento, CA 95814
Telephone No.: (916) 654-1981
Fax No.: (916) 654-1274
E-mail address: KDahl@cdfa.ca.gov

Inquiries concerning the rulemaking process are to be addressed to the following:

Name: Nancy Grillo, Associate Analyst
Address: Department of Food and
Agriculture
1220 N Street, Room A-116
Sacramento, CA 95814
Telephone No.: (916) 651-7280
Fax No.: (916) 653-4249
E-mail address: NGrillo@cdfa.ca.gov

Written comments, facsimiles or e-mails regarding this proposal are to be addressed to the following:

Name: Kristen Dahl, Dairy Program
Coordinator
Address: Department of Food and
Agriculture
Milk and Dairy Food Safety
Branch
1220 N Street, Room A-170
Sacramento, CA 95814
Telephone No.: (916) 654-1981
Fax No.: (916) 654-1274
E-mail address: KDahl@cdfa.ca.gov

Website Access:

Materials regarding this proposal can be found at <http://www.cdfa.ca.gov>

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended Section 3424, subsection (b) of the regulations in Title 3 of the California Code of Regulations pertaining to *Bactrocera zonata* Fruit Fly Interior Quarantine as an emergency action that was effective on August 1, 2006. The Department proposes to continue the regulation as adopted and to complete the amendment process by submission of a Certificate of Compliance no later than November 29, 2006.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture may certify that there was compliance with provisions of Section 11346.1 of the Government Code within 120 days of the emergency regulation.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before November 6, 2006.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code Sections 401 and 403). Existing law provides the Secretary may establish, maintain, and enforce quarantine regulations, as he deems necessary, to circumscribe and exterminate or

prevent the spread of pests (Food and Agricultural Code, Sections 5301, 5302 and 5322).

The amendment Section 3424(b) removed the quarantine area for *Bactrocera zonata* of approximately 106 square miles in the Fresno area of Fresno and Madera counties. The effect of the amendment was to remove the authority for the State to regulate movement of hosts and possible carriers of *Bactrocera zonata* within and from the Fresno area, because it is no longer necessary to protect California's agricultural industry since the fly has been eradicated from that area. There is no existing, comparable federal regulation or statute regulating the intrastate movement of hosts and possible carriers of *Bactrocera zonata*.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Section 3424 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce Section 3424. No reimbursement is required for Section 3424 under Section 17561 of the Government Code because this amendment removed the portions of Fresno and Madera counties that from the area under quarantine; therefore, enforcement is no longer necessary. There are no mandated costs associated with the removal of this area from the regulation.

The Department also has determined that the amended regulation will involve no additional costs or savings to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT

The Department has made an assessment that the proposed amendment to the regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY

The Department proposes to adopt Section 3424 pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be directed is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California

95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Liz Johnson at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/cdfa/pendingregs).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulation in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulation amended by the Department differs from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

TITLE 10. DEPARTMENT OF INSURANCE

RH06092874

September 22, 2006

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

SUBJECT OF PROPOSED RULEMAKING

Notice is hereby given that the Insurance Commissioner proposes to adopt Section 2653.6 and to amend Sections 2651.1, 2661.1, 2661.3, 2662.1, 2662.3, and 2662.5 of Subchapter 4.9, Title 10, of the California Code of Regulations.

AUTHORITY AND REFERENCE

The Commissioner proposes to amend the regulation under the express authority of California Insurance Code Sections 1861.05, 1861.055 and 1861.10. The proposed regulation will implement, interpret and make specific the provisions of California Insurance Code Sections 1861.05(a) 1861.05(c), 1861.055, 1861.08, 1861.10(a), 1861.10(b).

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: November 6, 2006 at 10:00 a.m.

Location: California Department of
Insurance Hearing Room
45 Fremont Street, 22nd Floor
San Francisco, CA 94105

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to present oral and/or written comments at the hearing. Written comments not presented at the hearing must be addressed to the following contact person:

Lisbeth Landsman-Smith, Staff Counsel
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492-3561
E-mail: landsmanl@insurance.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If she is unavailable, inquiries may be addressed to the following backup contact person:

Natasha Ray, Senior Staff Counsel
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492-3559

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to the contact person at

her address listed above, no later than 5:00 p.m. on November 6, 2006. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: landsmanl@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of the contact person for this proceeding using the following facsimile number: (916) 324-1883. **Comments shall be transmitted by one method only and are subject to the deadline set forth above for written comments. Comments sent to other e-mail addresses or other facsimile numbers will not be accepted.**

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Person with sight or hearing impairments are requested to notify the contact person for this hearing in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with Insurance Code Section 10089.11(c) and the provisions of Subchapter 4.9, Title 10, California Code of Regulations, in connection with their participation in this matter. Persons interested in inquiring about the appropriate procedures should contact the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, California 95814
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking shall also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Proposition 103, approved by California voters in 1988, established the requirement that all property-casualty insurers obtain prior approval of the Insurance Commissioner for proposed rate changes. (Insurance Code §1861.05). Proposition 103 permits consumer participation in the approval process. (Insurance Code §1861.10(a)). It further requires the Commissioner to award reasonable advocacy and witness fees to a consumer when the consumer makes a “substantial contribution” to the adoption of any order, regulation, or decision by the commissioner or a court. (Insurance Code §1861.10(b)).

As required by Insurance Code §1861.055, the Department has promulgated regulations under Title 10, Chapter 5 of the Code of Regulations (CCR) governing the prior approval process, including regulations governing consumer participation. The proposed regulations will modify those regulations contained in Subchapter 4.9 (Rules of Practice and Procedure for Rate Proceedings) in order to clarify that consumers who participate in the approval process after having filed a petition for a hearing may seek an award of reasonable advocacy fees.

For example, CCR §§2651.1 and 2661.1 contain definitions. The Department proposes to amend these definitions to clarify that a “proceeding” is established upon submission of a petition for a hearing by a consumer. In addition, existing regulations do not provide a procedure by which an insurer may withdraw its rate or class plan application while a petition for hearing is pending. The Department proposes the adoption of CCR §2653.6, which will set forth such a procedure.

Additional proposed amendments of Articles 13 (Intervention) and 14 (Intervenor’s and Participant’s Fees and Expenses) within Subchapter 4.9 will update sections concerning the intervention process. For example, the Department proposes to amend CCR §2661.3(a) to clarify that a person who petitions for a hearing may combine the petition for hearing with a petition to intervene in one pleading. In addition, the Department proposes to amend CCR §2662.3(a)(3) to expand the list of the types of documents that a consumer may use to prove that it has made a substantial contribution to the adoption of any order, regulation, or decision by the Commissioner.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

OTHER STATUTORY REQUIREMENTS

There are no other specific statutory requirements applicable to the proposed regulations.

The Commissioner has made the following initial determinations:

Mandates On Local Agencies Or School Districts — Regulatory action imposed herein will result in no program mandates on local agencies or school districts.

Fiscal Impact — The regulations will involve no costs or savings to any State agency, no reimbursable costs to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no nondiscretionary costs or savings to local agencies, and no costs or savings in federal funding to the State.

Impact On Housing Costs — The proposed regulations will have no significant effect on housing costs.

Economic Impact On Businesses — The proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because it amends existing insurance regulations.

Cost Impact On Private Persons Or Entities/Businesses — Other than the cost impact incurred under the existing regulations, the agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment Regarding Effect On Jobs/Businesses — Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Impact On Small Business — The proposed regulations will only affect insurance companies and will therefore not affect small business. Pursuant to Government Code section 11342.610(b)(2), insurers are not small businesses.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that

has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The Commissioner invites public comment on alternatives to this regulation.

TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed action. The Commissioner also has available all the information upon which this proposed action is based as well as the express terms of the proposed action. The initial statement of reasons and the text of the proposed amendment are available on the Department's website and may be accessed as explained below.

The Commissioner will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the address above, which currently includes this notice, the proposed text of the regulation, and the initial statement of reasons. Requests for inspection and copying should be directed to the contact person listed above. The final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should also be directed to the contact person listed above.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulation, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find, near at the top of the leftmost column, the pull down menu under the heading "Quick Links." Select the "Legal Information" link. On the "Legal Information" page, click on the "Proposed Regulations" link. When the "Search or Browse for Documents for Proposed Regulations" screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "RH06092874" (the Department's regulation file number for this regulation) in the search field. Alternatively, search using as your search term the California Insurance Code section number of a code

section that the regulations implement (for instance, "2651.1"), or search by keyword ("Intervenor," for example, or "advocacy fees"). Then, click on the "Submit" button to display links to the various filing documents.

To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear.

AVAILABILITY OF MODIFIED TEXT OF REGULATION

In response to public comment, the Commissioner may determine that changes to the proposed text are appropriate. If the Commissioner makes changes that are sufficiently related to the original proposed text, copies of the changed text (with the changes clearly indicated) will be made available to the public for at least 15 days before the Commissioner adopts the regulation as modified. Please send requests for copies of any changed text to the Contact Person listed above. Copies of the changed text will automatically be sent to all persons who testified or presented comments at the public hearing or submitted written comments during the comment period, and to anyone who requested information regarding the proposal. The Commissioner will accept written comments concerning the changes only, for a period of at least 15 days after the date on which the changed text is made available.

TITLE 10. DEPARTMENT OF INSURANCE

RH05047633

September 7, 2006

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING REGARDING PRODUCER LICENSING BACKGROUND REVIEW GUIDELINES

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to promulgate regulations described below after considering comments from the public. The Commissioner proposes to establish factors for licensing background review guidelines in the California Code of Regulations, Title 10, Chapter 5, Subchapter 1, Article 5.7 §§2183, 2183.1, 2183.2, 2183.3, and 2183.4 that would relate to all producer licensing types and repeals CCR Title 10, Chapter 5, Subchapter 7, Article 8, §2691.18, and Article 9, §2691.19 that relate only to insurance adjusters.

AUTHORITY AND REFERENCE

The purpose of these regulations is to implement, interpret, and make specific the provisions of California Insurance Code §12921(a). California Insurance Code §12921(a) establishes the Insurance Commissioner as the chief regulator of the business of insurance. Specifically, Insurance Code section 12921(a) provides the following:

"The commissioner shall perform all duties imposed upon him or her by the provisions of this code and other laws regulating the business of insurance in this state, and shall enforce the execution of those provisions and laws."

Case law supports a broad interpretation of the Commissioner's authority as a regulator in *20th Century Insurance Company v. John Garamendi*, (1994) 8 Cal.4th, 216, citing *Calfarm Insurance Company v. Deukmejian*, by finding that the Commissioner "has broad discretion to adopt rules and regulations as necessary to promote the public welfare."

In order to fulfill the Commissioner's regulatory duties, the Department of Insurance has promulgated regulations related to various aspects of the business of insurance, including producer licensing. Currently, the Department has regulations related to producer license background review for use in cases involving insurance adjusters only. CCR Title 10, Chapter 5, Subchapter 7, Article 8, §2691.18, sets forth criteria for determining a substantial relationship between a crime or act and the duties of an insurance adjuster. CCR Title 10, Chapter 5, Subchapter 7, Article 8, §2691.19, provides criteria for the evaluation of rehabilitation when considering discipline of the license of an insurance adjuster.

The Department has no such background review guidelines for use in cases involving other types of insurance producers. To effectively and consistently regulate the activities of all insurance producers, the Commissioner must promulgate rules and regulations related to producer background review that will encompass all license types. The proposed licensing background review regulations, promulgated pursuant to the authority provided in Insurance Code §12921(a), are necessary in order to provide a clear and predictable scheme for use by Department staff, Administrative Law Judges, and insurance producers in evaluating license discipline.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: November 9, 2006, at 9:00 a.m. to 12:00 p.m.

Location: Department of Social Services
Office Building 9
744 P Street
Sacramento, CA 95814

The hearing will continue on the date noted above until all testimony has been submitted or 12:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on November 9, 2006. Please direct all written comments to the following contact person:

Denise YPONCE, Staff Counsel
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento CA 95814
Telephone: (916) 492-3171
yuponced@insurance.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If she is unavailable, inquiries may be addressed to the following backup contact person:

Darrel SECREST, Staff Counsel
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492-3567
secrestd@insurance.ca.gov

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to one of the contact persons at his respective address listed above, no later than 5:00 p.m. on November 9, 2006. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: yuponced@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to

the attention of Denise YPONCE and sent to the following facsimile number: (916) 324-1883. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

INFORMATIVE DIGEST

Summary of Existing Law and Policy Statement Overview

Insurance producer license discipline, in general, falls under the provisions of the California Insurance Code, primarily §§1668 and 1669. The Department does not have regulatory guidelines that supplement these general producer license disciplinary statutes. The Department, however, does currently have regulations related to producer license background review for use in cases involving insurance adjusters only. CCR Title 10, Chapter 5, Subchapter 7, Article 8, §2691.18, sets forth criteria for determining a substantial relationship between a crime or act and the duties of an insurance adjuster. CCR Title 10, Chapter 5, Subchapter 7, Article 8, §2691.19, provides criteria for the evaluation of rehabilitation when considering discipline of the license of an insurance adjuster.

In order to effectively and consistently regulate the activities of all insurance producers, the Commissioner must promulgate rules and regulations related to producer background review that will encompass all license types. Specifically, regulations that apply to all producer license types are needed to clearly establish whether a crime or act is substantially related to the qualifications, functions, or duties of an insurance producer and to set forth criteria to be used in evaluating the rehabilitation of an applicant or licensee. As a result of the promulgation of the proposed regulations, it is necessary to repeal the existing regulations related to producer license background review that apply to insurance adjusters only.

Effect of Proposed Action

The Commissioner believes it is necessary to revise the California Code of Regulations, through the addition of the proposed regulations and repeal of the existing regulations, so that there exists a set of license background review guidelines that apply to all insurance producer license types. The proposed licensing background review regulations will provide a clear and predictable scheme for use by Department staff, Administrative Law Judges, and insurance producers in evaluating license discipline, and, as a result, provide the public with greater transparency of government.

**MANDATES ON LOCAL AGENCIES
OR SCHOOL DISTRICTS**

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

**COST OR SAVINGS TO STATE/LOCAL
AGENCY OR SCHOOL DISTRICT OR
IN FEDERAL FUNDING**

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

**ECONOMIC IMPACT ON BUSINESSES
AND THE ABILITY OF CALIFORNIA
BUSINESSES TO COMPETE**

The Commissioner has made an initial determination that the proposed regulations may not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

**POTENTIAL COST IMPACT ON PRIVATE
PERSONS OR ENTITIES/BUSINESSES**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the state that these regulations be adopted.

**EFFECT ON JOBS AND BUSINESSES
IN CALIFORNIA**

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. The Commissioner estimates that the proposed regulations will not have any impact on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. Interested parties are invited to comment on this issue.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed regulations may not affect small business as defined in Government Code section 11342.610, subdivision (b), paragraph (2).

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

**TEXT OF REGULATIONS AND INITIAL
STATEMENT OF REASONS**

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed regulations. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the con-

tact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying at 300 Capitol Mall, 17th Floor, Sacramento, California 95814, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find, near the top of the leftmost column, the pull down menu under the heading "Quick Links." Select the "Legal Information" link. On the "Legal Information" page, click on the "Proposed Regulations" link. When the "Search or Browse for Documents for Proposed Regulations" screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "**RH05047633**" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Insurance Code section number of the code section that the regulations implement ("2183"), or search by keyword ("Producer License Background Guidelines" for example). Then, click on the "Submit" button to display links to the various filing documents.

To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the "Producer Licensing Background Review Guidelines" link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE

If the regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

TITLE 10. DEPARTMENT OF INSURANCE

File No. RHO6090982 Date: September 11, 2006

Regulations Re: Workers' Compensation Fraud

NOTICE OF PROPOSED REGULATORY ACTION AND NOTICE OF PUBLIC HEARING

SUBJECT OF PROPOSED REGULATORY ACTION

The Insurance Commissioner proposes to adopt on a permanent basis the emergency regulations described below after considering comments from the public. Specifically, the Commissioner proposes to adopt as permanent regulations the emergency regulations presently in effect that are set forth at California Code of Regulations, Title 10, Chapter 5, Subsections 2698.52(c), 2698.53(b) and 2698.56(c).

AUTHORITY AND REFERENCE

The Insurance Commissioner proposes to adopt the subject regulations under the authority of California Insurance Code Section 1872.83(g). These regulations are intended to implement California Insurance Code Section 1872.83(g). Therefore, the appropriate reference citation for these regulations is California Insurance Code Section 1872.83(g).

HEARING DATE, TIME AND LOCATION

Date: November 8, 2006
Time: 10:00 AM — 4:00PM
Location: California Department of Insurance
45 Fremont Street, 22nd Floor
Administrative Law Bureau—Hearing Room
San Francisco, CA 94105

**PRESENTATION OF WRITTEN AND/OR
ORAL COMMENTS; CONTACT PERSONS**

Debra A. Chaum, Senior Staff Counsel
California Department of Insurance, Legal Division
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4115
chaumd@insurance.ca.gov

DEADLINE FOR WRITTEN COMMENTS

All written materials [including e-mail transmissions] must be received by the Insurance Commissioner, addressed to the contact person and address designated above, no later than 5:00 p.m. on November 8, 2006. Any written materials received after that time will not be considered.

**COMMENTS TRANSMITTED BY
E-MAIL OR FACSIMILE**

The Commissioner will accept written comments transmitted by e-mail provided that they are sent to the following e-mail address: chaumd@insurance.ca.gov.

ACCESS TO HEARING ROOMS

Please contact the contact person designated above.

INFORMATIVE DIGEST

**Summary of Existing Law and Policy Statement
Overview:**

California Insurance Code Section 1872.83(a) provides, in part, that the Insurance Commissioner shall ensure that the Fraud Division aggressively pursues all reported instances of probable workers' compensation fraud. California Insurance Code Section 1872.83(b) provides that for the purpose of funding the pursuit of all probable instances of insurance fraud, there shall be annual assessment. California Insurance Code Section 1872.83(d) sets forth that after incidental expenses, at least 40 percent of the funds assessed pursuant to this statute shall be provided to the Fraud Division for enhanced investigative efforts. The Commissioner initially promulgated and adopted regulations pursuant to the above described statutory sections in 1993. These regulations are set forth at California Code of Regulations Title 10, Chapter 5, Subchapter 9, and Sections 2698.50-59.

After studying the effectiveness of these regulations, the Commissioner determined that certain subsections of the regulations needed to be amended in order to increase the efficiency of the process. Accordingly, pursuant to the statutory authority conferred upon him by California Insurance Code Section 1872.83(g), on March 3, 2006 the Commissioner adopted emergency regulations which amended Subsections 2698.52(c), 2698.53(c) and 2698.56(c). The Commissioner re-adopted these regulations on July 28, 2006. It is now the Commissioner's intention to adopt these regulations pursuant to the regular rulemaking process as outlined in the California Government Code so that they will be permanent regulations. The text of the proposed regulations is identical to that of the existent emergency regulations. The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is set forth below. The regulations proposed herein would do the following:

1. Eliminate the five percent reserve requirement imposed by Title 10, Subsection 2698.52(c);
2. Eliminate the semi-annual distribution of grant funding specified in Title 10, Subsection 2698.53(b) and replace it with the requirement of annual funding in July;
3. Eliminate the accounting method known as Federal OMB Circular A-87 from the list of accounting methodologies that a count (district attorney) may use in calculating indirect costs for use in grant applications as specified in Title 10, Subsection 2698.56(c).

EFFECTS OF PROPOSED ACTION

The major effects of the regulations are as follows:

**Proposed California Code of Regulations
Subsection 2698.52(c)**

The text of the emergency regulation at subsection 2698.52(c) has been adopted. The subsection (as originally drafted prior to the emergency regulations) required the Department to reserve five percent of the funds to be granted. This subsection has been amended to eliminate the entire second and third sentences of the subsection so that the requirement that the Department of Insurance hold five percent of the grant in reserve is eliminated. The county that is the recipient of the grant has access to the entire amount of the grant rather than having to wait to receive the additional five percent of the grant at a later time. The Commissioner has modified the grant application and distribution process and

amended the California Code of Regulations to specify and clarify this change in the grant application and distribution procedure.

Proposed California Code of Regulations Section 2698.53(b)

The text of the emergency regulation at subsection 2698.53(b) has been adopted. This subsection (as originally drafted prior to these emergency regulations) has been amended to eliminate the semi-annual distribution of grant funding specified in Title 10, Subsection 2698.53(b); as amended the subsection imposes the requirement of annual funding in July. The Commissioner has modified the grant application and distribution process to make the process simpler and more efficient and has amended the California Code of Regulations to specify and clarify this change in the grant application and distribution procedure.

Proposed California Code of Regulations 2698.56(c)

The text of the emergency regulation at subsection 2698.56(c) has been adopted. This subsection (as originally drafted prior to these emergency regulations) has been amended to eliminate the accounting method known as Federal OMB Circular A-87 from the list of accounting methodologies that district attorneys (a county) may use in calculating indirect costs for use in grant applications as specified in Title 10, 2698.56(c). The Commissioner has modified the grant application and distribution process to make the process simpler and more efficient and has amended the California Code of Regulations to specify and clarify this change in the grant application and distribution procedure.

MANDATES

These regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

**COST OR SAVINGS TO STATE/LOCAL
AGENCY OR SCHOOL DISTRICT OR
IN FEDERAL FUNDING**

The Commissioner has made an initial determination that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

**ECONOMIC IMPACT ON BUSINESSES
AND THE ABILITY OF CALIFORNIA
BUSINESSES TO COMPETE**

The Commissioner has made an initial determination that the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. As described above, certain previously exempt insurers will for the first time be required to perform asset adequacy analysis as part of the actuarial opinion and memorandum they must prepare each year. The types of businesses that may be affected are life insurers, reinsurers and fraternal benefit societies. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

**POTENTIAL COST IMPACT ON PRIVATE
PERSONS OR ENTITIES/BUSINESSES**

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

**EFFECT ON JOBS AND BUSINESSES
IN CALIFORNIA**

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner has determined that the proposed regulations will have no impact on any of the above.

IMPACT ON HOUSING COSTS

The Commissioner has determined that the matters proposed herein will have no effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that small businesses should not incur additional expenses as a result of these regulations because these regulations do not impose any requirements or have any impact on small business as defined by the California Government Code. These regulations solely impose requirements on district attorneys and insurers, neither of these groups fall within the definition of small business.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed adoption of the regulations. Upon request, the initial statement of reasons will be made available for inspection and copying. Written requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above. The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including

any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find, near at the top of the leftmost column, the pull down menu under the heading "Quick Links." Select the "Legal Information" link. On the "Legal Information" page, click on the "Proposed Regulations" link. When the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search enter "File No. RHO6090982" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the section number of a code section that the regulations implement. [For instance "California Insurance Code Section 1872.83"]. Search by keyword ["WORKERS' COMPENSATION FRAUD"]. Then, click on the 'Submit' button to display links to the various filing documents. To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the WORKERS' COMPENSATION FRAUD link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE

If the regulations adopted by the Department differ but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

GENERAL PUBLIC INTEREST

CALIFORNIA GAMBLING CONTROL COMMISSION

This notice of general public interest concerns the notice published on September 8, 2006 (notice file number Z06-0823-01) concerning amendments to the conflict of interest code of the California Gambling Control Commission. This September 8 notice stated that the written public comment period closed on October 23, 2006. The comment period is hereby extended to Friday, October 27, 2006.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —
Public Interest Notice
For Publication September 22, 2006
CESA CONSISTENCY DETERMINATION FOR
Fisheries Restoration Projects within the Geographic
Boundaries of National Marine Fisheries Service
Santa Rosa, California, Field Office

The Department of Fish and Game ("Department") received notice on August 29, 2006 that the U.S. Army Corps of Engineers ("Corps") proposes to rely on its consultation with a federal agency to carry out projects that may adversely affect species protected by the California Endangered Species Act ("CESA"). These projects consist of various streamside and in-water restoration activities undertaken by private landowners in order to restore flow and habitat conditions in creeks and streams within the Geographic Boundaries of National Marine Fisheries Service's ("NMFS") Santa Rosa, California, Field Office, which includes counties along the central coast from Mendocino to San Luis Obispo.

NMFS issued a no jeopardy programmatic federal biological opinion (151422SWR2006SR00190:JMA) to the Corps on June 21, 2006 which authorizes incidental take of the federally and state endangered Central California Coast ESU Coho Salmon (*Oncorhynchus kisutch*) and the federally and state threatened Southern Oregon/Northern California Coast (SONCC) ESU Coho Salmon (*O. kisutch*).

Pursuant to California Fish and Game Code Section 2080.1, NMFS is requesting a determination that biological opinion 151422SWR2006SR00190:JMA is consistent with CESA. If the Department determines that the federal biological opinion is consistent, landowners who propose activities that fall within the scope

of the programmatic biological opinion will not be required to obtain a separate incidental take permit under Fish and Game Code section 2081 for the project.

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION

Fish and Game Code Section 2080.1
CESA No. 2080-2006-020-02

PROJECT: Lower Northwest Interceptor Program
New Natomas Pump Station
LOCATION: Sacramento and Yolo Counties
NOTIFIER: Stan Dean, Plant Manager, Sacramento
Regional County Sanitation District
(SRCS)

BACKGROUND

The proposed Lower Northwest Interceptor project involves the construction of approximately 20 miles of wastewater conveyance infrastructure and associated operations and maintenance support facilities. The main activity associated with construction of the proposed project is the excavation of an open trench large enough to accommodate two 60-inch diameter force mains to carry sewage effluent along the entire length of the proposed project's alignment. In addition to the installation of the force mains, the proposed project involves the construction of tunnels, gravity lines, manholes, air release valves, blow-off valves, pumping stations, surge tanks, transition structures, valve structures, temporary and permanent access roads, temporary staging areas, power lines, a power substation, and temporary batch plants.

The alignment of the proposed project extends from the existing Natomas Pump Station in northwestern Sacramento County to the Sacramento Regional Wastewater Treatment Plant (SRWTP) in southern Sacramento County. Construction of the proposed project will occur in agricultural, residential and commercial areas in Sacramento and Yolo counties, as well as in the cities of Sacramento and West Sacramento. The proposed project's alignment traverses private property, reclamation district easements, the Yolo Shortline Railroad and Union Pacific rights-of-way, and city and county road rights-of-way. The proposed project has completed tunneling under several waterways including the Sacramento River (in two separate locations), the Barge Canal, Babel Slough, Morrison Creek, and Laguna Creek. The primary objectives of the proposed project are to: 1) convey the wastewater flow of the Upper Northwest Interceptor to the SRWTP, 2) provide sewer service to the City of West Sacramento, 3) provide relief for the

existing Northeast Trunk System, Dry Creek Interceptor, and Arden Pump Station, and 4) provide wastewater flow capacity for future planned growth in the Rio Linda, Natomas and West Sacramento areas.

Because of the project's potential for take of the giant garter snake (*Thamnophis gigas*)(GGs), on March 16, 2001 the U.S. Army Corps of Engineers consulted with the U.S. Fish and Wildlife Service (Service), as required by the Endangered Species Act ("ESA") (16 U.S.C. § 1531 et seq.). On September 10, 2004 the Service issued Biological Opinion No. 1-1-04-F-0029 (BO) for the Lower Northwest Interceptor Project (Corps # 200100495) (SCH # 2001112085 February 2003 Draft Environmental Impact Report, and SCH# 2002092071 May 2003 Final Environmental Impact Report (FEIR) Volume 3 of 3), describing the project actions and setting forth measures to mitigate impacts to GGS and its habitat. GGS is also listed under the California Endangered Species Act, Fish and Game Code Sections 2050 et seq. (CESA). The Service has issued several amendments to the federal BO, and the Department of Fish and Game (DFG) has issued several CESA Consistency Determinations based on the BO revisions. Most recently, the Service amended the project BO, File No. 1-1-06-F-0139, dated June 28, 2006, to clarify the acreage of temporary and permanent effects to GGS habitat relating to the New Natomas Pump Station portion of the project. On August 10, 2006, the Director of DFG received a request from SRCSD that DFG find the BO, as amended, consistent with CESA as to anticipated take of GGS for the proposed project.

DETERMINATION

Based on the terms and conditions in federal BO Amendment No. 1-1-06-F-0139, DFG has determined that the BO is consistent with CESA because the project and mitigation measures meet the conditions set forth in Fish and Game Code Section 2081(b) and (c) for authorization of incidental take of species protected under CESA. The Department specifically finds that the measures identified in the BO will minimize and fully mitigate the project's potential impacts on the Giant garter snake. These measures include, but are not limited to, the following requirements:

1. SRCSD shall comply with all avoidance and minimization measures set forth in the June 28, 2006 BO Amendment;
2. Following the completion of construction activities, any temporary fill or construction debris will be removed and disturbed areas will be restored to pre-project conditions;

3. If a snake is encountered during implementation of the project, appropriate steps will be taken by the on-site biologist in accordance with the GGS measures identified in the federal BO;
4. If a lapse of two or more weeks in construction activities occurs, no further construction may occur until the area has been resurveyed by the on-site biologist and it is verified by the biologist that GGS are free of harm, harassment or mortality; and
5. SRCSD has compensated for all temporary and permanent impacts to GGS habitat by purchasing off-site GGS habitat credits from Wildlands, Inc. and the City of Sacramento. Based on the required measures in the BO for mitigating impacts to GGS wetlands, SRCSD has purchased 9.11 acres for impacts to GGS in the Sacramento County portion of the Natomas Basin, 3.76 acres at the Wildlands, Inc. South Stone Lakes property, and 156.8 acres at the Wildlands, Inc. Pope Ranch property in Yolo County. SRCSD has compensated for the 0.84 acres of impacts associated with the New Natomas Pump Station (addressed in BO amendment No. 1-1-06-F-0139), which has been identified by the City of Sacramento as part of the City's property, as part of the purchase of 9.11 acres from Wildlands, Inc. The mitigation habitat has been deeded in fee title to the Natomas Basin Conservancy with endowment funding for the long term management of GGS habitat.

Pursuant to Fish and Game Code section 2080.1, incidental take authorization under CESA will not be required for incidental take of GGS for the project, provided SRCSD implements the project as described in the amended BO and complies with the mitigation measures and other conditions described in the amended BO. If there are any substantive changes to the project, including changes to the mitigation measures, or if the Service amends or replaces the BO, SRCSD will be required to obtain a new consistency determination or a CESA incidental take permit (under Fish & Game Code 2081) from DFG.

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION

Fish and Game Code Section 2080.1

CESA No. 2080-2006-019-03

PROJECT: Montanera Residential Development
— Quercus Creek Restoration and
Recreational Park Amendment
LOCATION: Orinda, Contra Costa County
NOTIFIER: Wetlands Research Associates, Inc., on
Behalf of the City of Orinda

BACKGROUND

Orinda Gateway, LLC proposes to construct the Montanera Residential Development on a 985 acre site commonly known as Gateway Valley, located at the western edge of the City of Orinda, south of Highway 24 ("Montanera project"). The development area is approximately 216 acres, and will require grading of 253 acres including upland and wetland habitats. Orinda Gateway, LLC will conserve 973 acres of permanent open space consisting of 768 acres on site and 205 acres off site at the adjacent Indian Valley property ("conservation lands"). The Montanera project will result in 99.25 acres and 158.26 acres of permanent direct and indirect impacts, respectively, to Alameda whipsnake (*Masticophis lateralis euryxanthus*) habitat. Alameda whipsnake is listed as a threatened species under both the federal Endangered Species Act ("ESA") (16 U.S.C. § 1531 *et seq.*) and the California Endangered Species Act ("CESA") (Fish & G. Code, § 2050 *et seq.*). On October 8, 2004, the U.S. Fish and Wildlife Service ("Service") issued a "no jeopardy" biological opinion (No. 1-1-02-F-0168) for the Montanera project. Subsequently, on November 12, 2004, the Department of Fish and Game ("DFG") issued a consistency determination (No. 2080-2004-017-03) for the Montanera project.

The City of Orinda ("City") proposes to construct community playfields and public recreational facilities, and restore a degraded stretch of Quercus Creek on the 27.4 acre site located adjacent to the Montanera project site in the City of Orinda ("City project"). The City project and related infrastructure will require grading of approximately 18.3 acres of the 27.4 acre site, which will generally impact upland habitat, except for minor temporary impacts to ephemeral drainages to connect the restored Quercus Creek. The City project will result in 18.3 and 16.1 acres of permanent direct and indirect impacts, respectively, to Alameda whipsnake habitat.

Because the City project will result in permanent direct and indirect impacts to whipsnake habitat and has the potential to take a species listed under ESA, the U.S. Army Corps of Engineers consulted with the Service. On July 17, 2006, the Service issued Biological Opinion No. 1-1-06-F-0084, which amends Biological Opinion No. 1-1-02-F-0168 to incorporate the City project into the description of the previously permitted Montanera project.

On August 10, 2006, Wetlands Research Associates, Inc., on behalf of the City of Orinda, requested a determination from the Director of DFG pursuant to Fish and Game Code section 2080.1 that the amended biological opinion is consistent with CESA.

DETERMINATION

DFG has determined Biological Opinion No. 1-1-02-F-0168, as amended by Biological Opinion No. 1-1-06-F-0084, is consistent with CESA because the mitigation measures in the amended biological opinion meet the conditions set forth in Fish and Game Code section 2081, subparagraphs (b) and (c), for DFG authorization of incidental take of CESA-listed species. Specifically, DFG finds that the take of Alameda whipsnake will be incidental to an otherwise lawful activity, and the mitigation measures identified in the amended biological opinion will minimize and fully mitigate the impacts of the authorized take of Alameda whipsnake, including, but not limited to, the following:

1. Orinda Gateway will compensate for impacts to 257.5 acres of Alameda whipsnake habitat associated with the Montanera project through the conservation and enhancement of over 584.49 acres of contiguous suitable whipsnake habitat and dispersal corridor ("Montanera Preserve Areas") as part of the overall 973 acres of conservation lands.
2. The City of Orinda will compensate for impacts to 34.4 acres of Alameda whipsnake habitat associated with the project through the conservation and enhancement of 112 acres of suitable whipsnake habitat adjacent to the 584.49 acre Montanera Preserve Areas to permanently protect and manage a larger part of the dispersal corridor for the whipsnake between proposed critical habitat Units 1 and 2 from Gudde Ridge to the San Leandro Reservoir.
3. The City's 112 acre permanent offsite open space preserve area will be comprised of: (a) approximately 44.5 acres of open space located adjacent and contiguous to the eastern boundary of the Moraga Creek Open Space Area preserved as part of the Montanera project (Moraga Creek Open Space Extension), and (b) approximately 68 acres of open space located directly south of and contiguous to the southern boundary of the Indian Valley Preserve, which provides mitigation for the Montanera project (Upper San Leandro Open Space Area). The Moraga Creek Open Space Area and the Upper San Leandro Open Space Area are collectively known as the "City Preserve Areas."
4. The combined Montanera and City Preserve Areas will be managed based on a management plan approved by the Service and DFG and funded by an endowment approved by the Service and DFG. The management plan will include long-term monitoring for Alameda whipsnake presence and

the implementation of adaptive management measures as needed.

5. The City Preserve Areas will be permanently protected and managed pursuant to conservation easements approved by the Service and DFG, substantially similar to the conservation easements already approved for the Montanera Preserve Areas.

Based on DFG's consistency determination, the City of Orinda does not need to obtain authorization from DFG under CESA for take of Alameda whipsnake that occurs in carrying out the City project, provided the City complies with the mitigation measures and other conditions described in the biological opinion, as amended. However, if the City project as described in the opinion, including the mitigation measures therein, changes after the date of the opinion, or if the Service amends or replaces that opinion, the City will need to obtain from DFG a new consistency determination (in accordance with Fish and Game Code section 2080.1) or a separate incidental take permit (in accordance with Fish and Game Code section 2081) for any incidental take that might occur during construction of the City project.

FISH AND GAME COMMISSION

NOTICE OF RECEIPT OF PETITION

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2073.3 of the Fish and Game Code, the California Fish and Game Commission, on May 26, 2006, received a petition from the Endangered Species Recovery Council to delist the California Brown Pelican (*Pelecanus occidentalis californicus*) from the Endangered Species List. Habitat types for this species are primarily warm coastal marine and estuarine environments year-round.

Pursuant to Section 2073 of the Fish and Game Code, on June 5, 2006, the Commission transmitted the petition to the Department of Fish and Game for review pursuant to Section 2073.5 of said code. The Commission was scheduled to receive the Department's evaluation and recommendation relating to the petition at its October 5, 2006, meeting in San Diego. On August 24, 2006, pursuant to Section 2073.5(b) of said code, the Department requested a 30-day extension of time to complete its evaluation of the petition. Based on the new timeline, the Department's evaluation and recommendation relating to the petition will be discussed by the Commission at its December 7, 2006, meeting in Santa Monica.

Interested parties may contact Mr. Eric Loft, Wildlife Programs Branch, Department of Fish and Game, at telephone (916) 445-3406 for information on the petition or to submit information to the Department relating to the petitioned species.

OFFICE OF ADMINISTRATIVE LAW

REQUEST FOR PUBLIC INPUT ANNUAL RULEMAKING CALENDAR GOVERNMENT CODE 11017.6

Each year all state government agencies with rulemaking authority are required to prepare a rulemaking calendar pursuant to section 11017.6 of the Government Code. The rulemaking calendar lists anticipated rulemaking activity by the agency for the coming year. The rulemaking calendar is non-binding. Section 11017.6 specifically allows agencies to adopt rules that were not listed in the rulemaking calendar if it is required by unanticipated circumstances.

The requirement to prepare a rulemaking calendar was established in 1982 and has not been amended since 1987. In 2000 the Legislature adopted section 11340.85 of the Government Code, which requires state agencies to post all their rulemaking activity on their web sites. The information that must be posted on the web pursuant to section 11340.85 is much more extensive than that included in the annual rulemaking calendar pursuant to section 11017.6. Use of the internet as a primary information source has, obviously, increased greatly since 1982.

The Office of Administrative Law is attempting to evaluate the public's current level of reliance upon the annual rulemaking calendar as a source of information about state agency rulemaking. If you have found that the annual rulemaking calendar continues to be a valuable source of information to you, please let us know through one of the following methods:

1. Send an e-mail message to staff@oal.ca.gov;
2. Send a note via fax to (916) 323-6826;
3. Leave a telephone voice message at (916) 323-6815; or
4. Send a letter to:

Office of Administrative Law
Rulemaking Calendar Survey
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Any information that you could provide on this subject would be greatly appreciated.

RULEMAKING PETITION DECISIONS

AIR RESOURCES BOARD

IN THE MATTER OF A PETITION BY MERCURY MARINE

DECISION DENYING PETITION FOR RULEMAKING ACTION

On August 7, 2006, the Air Resources Board (ARB or Board) received a Petition for Rulemaking from Mercury Marine (“MM”). The Petition seeks to amend the California Regulations for New 2007 and Later Spark-Ignition Inboard/Sterndrive Pleasurecraft by allowing MM to “. . . meet a fleet average that equals the cap [emissions standard] that is currently in the regulation.”¹ MM asserts that the regulatory action sought in the Petition would make it possible for MM to certify a portion of the engines it produces in 2008 and 2009 without what MM asserts would be costly modifications otherwise necessary for the engines to comply with the existing fixed emissions standard. MM further asserts that the proposed regulatory action would provide relief with respect to an MM engine family that is scheduled to be discontinued by the engine supplier in July 2009, such that MM would not have to expend resources on a product with a production run too short to recoup the cost of investment. Pursuant to Government Code section 11340.7, the ARB hereby responds to the Petition submitted by MM. As discussed below, ARB denies the Petition.

The regulatory requirements for which the MM describes its compliance burdens were the subject of a regulatory amendment package proposed by the ARB staff in a Notice and Initial Statement of Reasons released September 30, 2005. The Notice provided that the ARB would conduct a public hearing to consider amendments to the marine spark-ignition engine regulations and test procedures. The Notice, Initial Statement of Reasons, proposed regulations, and subsequent rulemaking documents can be found on the ARB internet site at: <http://www.arb.ca.gov/regact/boatregs/boatregs.htm>.

On November 17, 2005, the Board held a public hearing to consider the proposed regulatory action. At the hearing the Board did not take final action to adopt the proposed regulations. Instead, the Board that day approved Resolution 05–57, which states:

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to incorporate into the approved regulations and test procedures the modifications set forth in Attachment C, with such other conforming modifications as may be appropriate, and then to adopt the amended regulations and test procedures as modified, after making the modified regulatory language available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modifications as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if the Executive Officer determines that this is warranted.

The Board delegated final adoption authority to the Executive Officer in order to meet the requirements of the Administrative Procedure Act (APA; Government Code section 11340 et seq.). The APA requires that whenever an agency makes a significant change to a proposed regulation that has been made available for public review, it must provide an additional public comment period of at least 15 days (commonly known as a “15–day comment period”; see Government Code section 11346.8(c)). The APA further requires that an agency cannot take final action to adopt the regulation until all modifications to the originally proposed regulatory language have been made available for this additional 15–day comment period (Government Code section 11346.8(c)). This is why the Board delegated the responsibility to adopt the amendments to the ARB Executive Officer.² Under this process, which ARB has followed for many years in rulemakings where 15–day modifications are made, the Executive Officer will sign an Executive Order that will formally adopt the regulations. The standard practice is for the Executive Order to be signed shortly before the regulatory action is submitted to the Office of Administrative Law, after all comments have been considered and the Final Statement of Reasons has been prepared.

The Petition, therefore, seems to be based on the incorrect assumption that the ARB has taken a final action to adopt the regulations at its November 17, 2005 public hearing. As described above, ARB has not yet taken final action to adopt the proposed regulations, hereinafter referred to as the “pending amended regulations.” The regulatory adoption process under the APA is still ongoing and has not yet been completed. If the Executive Officer ultimately concludes that MM or some other commenter has raised valid issues and that additional regu-

¹ See Petition, page 2.

² Health and Safety Code sections 39515 and 39516 authorize delegation to the Executive Officer.

latory modifications are appropriate, then the Executive Officer will either make such modifications or will return to the Board, as specified in the portion of Resolution 05-57 set forth above. At present, the Petition is premature; the ARB must complete the administrative process of adopting regulations before the agency can consider repealing or amending them.

For the benefit of the petitioner and the public, ARB is also providing the following preliminary evaluation of the substance of the petitioner's concerns. These comments may be useful for future discussion concerning a timely petition.

At the November 17, 2005 public hearing, ARB staff presented to the Board its recommendations for amending the regulations for recreational marine engines. As stated above, on September 30, 2005, staff published an Initial Statement of Reasons documenting the amendments to be proposed at that hearing. The Initial Statement of Reasons clearly expressed staff's intention for a per-engine (i.e., fixed) exhaust standard for engines rated less than 500 horsepower. This concept was not challenged via public comment or testimony and the Board approved staff's recommendation as contained in Resolution 05-57. Furthermore, one of staff's proposed modifications (subsequently adopted by the Board) was to allow manufacturers a choice of compliance options such that the manufacturer could phase-in the exhaust standard across its product line over a period of three years beginning in 2007, or could fully implement the exhaust standard across its product line beginning in 2008. The compliance phase-in approach, had MM chosen to employ it, could have extended the production run of the to-be-discontinued engine family to address the petitioner's concerns regarding its return on investment.

ARB is sympathetic to the circumstances MM describes as the unanticipated discontinuation of the 4.3 liter engine supplied by General Motors. However, any new proposed amendment to the pending amended regulations must take into account its effect on emission benefits and fair competition. Especially important is the effect that such an amendment would have with respect to small volume manufacturers. Additionally, the Petition does not provide ARB with enough information to grant it. For example, the only analysis presented to staff thus far has been an economic comparison between compliance with the existing regulation, a creative use of flexibilities within the current regulation, and the fleet average proposal of this Petition. Even so, those cost assessments are not itemized with enough detail to be convincing. Furthermore, no evidence has been provided to suggest that MM has thoroughly explored other options. For example, have the following alternatives been considered? What would be the pros and cons of each?

An early introduction of the 4.1 liter replacement engine to be used in 2008, rather than the 4.3 liter engine?

Use of an alternative supplier?

Introduction of product based on the existing phase-in schedule, rather than 100% compliance in 2008?

Not offering the 4.3 liter engine in California after 2007?

As of this writing, no other marine engine manufacturer that marinizes the General Motors 4.3 liter engine for inboard-sterndrive engines has asked the ARB for compliance relief from the pending amended regulations.

Further, ARB is not convinced that the action recommended in the Petition would preserve the emission benefits of the pending amended regulation. MM states that the proposal for a fleet average is emissions neutral; however, a fleet average may not benefit a small volume manufacturer without enough engines to balance emissions. In order to maintain a level playing field, ARB would have to consider exempting the small volume manufacturers from compliance altogether in 2008 and 2009. Such action has the potential to negatively impact projected emissions benefits.

Based on the reasons stated above, the Petition of Mercury Marine is denied. If the petitioner or others have any questions, the agency contact person is Aron Livingston, Staff Legal Counsel, (916) 327-8406. Interested persons may obtain a copy of the Petition from the ARB upon request.

Mercury Marine
Marine Products and Services
W6250 Pioneer Road
P.O. Box 1939
Fond du Lac, WI 54936-1939 USA
Phone: 920-929-5000
www.mercurymarine.com

August 7, 2006

Catherine Witherspoon
Executive Officer
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Dear Ms. Witherspoon:

Mercury Marine is a US owned manufacturer of marine engines primarily for recreational boats. We are based in Fond du Lac, WI and have boat builder customers and dealers throughout the US, including California, and world-wide.

One of our product lines is Inboard and Sterndrive Spark-ignited Marine Engines. For these engines, we buy base engines from General Motors and add the appropriate equipment to make them a marine engine.

Mercury Marine has supported ARB's efforts to reach Catalyst Level Emissions on these engines, and provided boats, engines and equipment to Southwest Research Institute (SwRI) to conduct the freshwater and saltwater catalyst test programs. When SwRI experienced failures in the exhaust systems and catalysts in saltwater, Mercury Marine provided engineering design and materials consulting, at no charge, to SwRI to assist them at getting through the saltwater portion of the test program.

Recently, Mercury Marine, being the last American outboard engine company, submitted a proposal to the ARB ICAT Program, offering to co-fund the first feasibility demonstration of a catalyst equipped four stroke outboard engine, as a precursor to the ARB pursuing catalyst level emissions regulations on outboard engines, which Staff has stated is a long term goal.

We believe that we have demonstrated a willingness and desire to build cleaner marine engines, and work closely with your staff to develop emissions standards that make sense and improve air quality in California. At the time that the current inboard and sterndrive emissions regulations were written, and recently modified, we were completely in agreement with them.

We now face a very unexpected problem and we are looking for your and the Board's help in avoiding a high and unexpected cost, while still providing California with the same level of emissions reduction that is in the regulation. General Motors has informed us that they intend to discontinue one of the engine models that they supply us and replace it with a new model. This will all take place in early 2009. The engine they are discontinuing is a 4.3 L V6 that is used in many entry level boats in the 17-20 foot range. They are replacing it with a 4.1 L V6 that is a completely different design.

Our estimated cost to meet the 2008 catalyst level emissions for the 4.3 L V6 is \$1.67M and this includes development, tooling and testing. We would then have to spend a like amount for the new 4.1 L V6 that replaces it. We would only have 18 months, or less, of production (less than 2000 engines) to recover the cost of developing the 4.3 L V6 Catalyst System. When this cost is added to the additional cost of a Fuel Injected 4.3

L with catalysts (most 4.3 L's currently being sold are carburetor engines), it makes this an unsaleable product.

We have looked at other options, and examined whether we could meet a corporate average of 5 g/kW-hr HC + NOx (same as the cap in the regulation) without catalysts on the 4.3 L.

To analyze the corporate average approach, we looked at what it would take to reach a 5 g/kW-hr corporate average for California. The attached spreadsheet (Corporate Averaging for 2008 — 2009) shows what it would take. In order to reach these levels on all other product it may require a higher precious metals loading in the catalysts. That cost would still be considerably less than the cost to develop and build catalyst systems on the 4.3 L V6. Note that this spreadsheet is a "worst case" calculation. Mercury Marine would build in more of a safety margin. Mercury Marine will also be selling an additional catalyst equipped engine model in 2008 and beyond that is not on this chart. Since we have no historical sales data on it, we left it off of the calculations, but it will help reduce the corporate average. Note: In 2008, the over 500 Hp engines do not have to be averaged in; they are averaged in for 2009.

What we are asking for, is to meet a 5 g/kW-hr corporate average for 2008 and part of 2009 and not catalyze the 4.3 L V6. In 2009, when the 4.1 L V6 becomes available from GM, we will, of course, launch it with catalysts. This approach is completely emissions inventory neutral and we are only looking to use it for 18 months.

Unfortunately, the regulation, as it is currently written, does not permit averaging, except for high performance engines. Therefore, we are formally requesting a Board Hearing so that we may present our case to the Board and seek relief from this regulation for 2008 and part of 2009. Our proposal is emissions inventory neutral, would preserve the emissions reductions in the regulation, and would require no SIP changes. We are proposing to meet a fleet average that equals the cap that is currently in the regulation.

Thank you for considering this issue. We look forward to discussing it with you further.

Best Regards,

/s/
Mark Riechers
Regulatory Dev. Mgr.
920-922-9967

/s/
Claus Bruestle
Vic President
— R & D

/s/
Kevin Grodzki
President — MerCruiser

Based on 2004 California Registrations (2008 Calculations, No High Perf; carbureted sales added to equivalent MPI sales; w/o
Catalyst version of 4.3 MPI; 3.0 MPI model added)

[illegible]

1. SALES-WEIGHTED AVERAGE POWER (P) OF ALL ENGINE FAMILIES = $\Sigma\{(4)\times(7)\}/\Sigma(4)$
2. ESTIMATED CORPORATE AVERAGE EMISSION VALUE = $\Sigma\{(4)\times(6)\times(7)\}/\Sigma\{(4)\times(7)\}$
3. CORPORATE AVERAGE STANDARD

Does not include new engine family to be launched in 2007 that will further reduce Corporate Average

202.7094

4.9737

5.0

Based on 2004 California Registrations (2009 calculations; 4.1L MPI added; High perf actual results; w/o Catalyst version 4.3 MPI; 3.0 MPI model added; carbureted sales added to equivalent MPI sales)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Engine Family	Models	Rated Power (kW)	Estimated		HC+NOx Family Emission Standard (g/kW-hr)	Family Sales-Weighted Power (kW) [(3) x (5)]/(5)	(4) x (7)	(4) x (6) x (7)
			Family	Model				
525 EFI			113		18.04	386.00	43618.0	786868.72
	525	386.0		113				
600SCI			14		10.81	441.30	6178.2	65550.702
	600	441.3		14				
700 Sci			75		16.00	522.00	39150.0	626400
	700	522.0		75				
850 Sci			6		25.30	625.10	3750.6	94890.18
	850	625.1		6				
1075 SCI			4		25.60	790.61	3162.4	80958.464
	1075	790.61		4				
5M9XM08.1H10			685		4.00	316.90	217076.5	868306
	425	316.9		685				
5M9XM08.1BAS			850		4.00	279.60	237660.0	950640
	375	279.6		850				
5M9XM06.2GME			412		4.00	232.81	95917.2	383668.8
	320	238.6		402				
Black Scorp				10				
5M9XM05.7GME			2834		4.00	246.00	697164.0	2788656
	330	246		2834				
5M9XM05.0GME			1692		4.00	193.90	328078.8	1312315.2
	260	193.9		1692				
5M9XM04.3GME			645		11.50	164.10	105844.5	1217211.75
	220	164.1		645				
4.1L MPI			645		4.00	164.1	105844.5	423378
	220	164.1		645				
3.0 MPI			2097		4.00	100.7	211167.9	844671.8
	135	100.7		2097				
TOTALS			10072		10.39		2089812.6	10443515.42

1. SALES-WEIGHTED AVERAGE POWER (P) OF ALL ENGINE FAMILIES = $\Sigma[(4) \times (7)] / \Sigma(4)$

2. ESTIMATED CORPORATE AVERAGE EMISSION VALUE = $\Sigma[(4) \times (6) \times (7)] / \Sigma[(4) \times (7)]$

3. CORPORATE AVERAGE STANDARD

Does not include new engine family to be launched in 2007 that will further reduce Corporate Average

207.9639

4.9859

5.0

DEPARTMENT OF CORRECTIONS AND
REHABILITATION

NOTICE OF DECISION ON PETITION TO
AMEND REGULATIONS

California Code of Regulations
Title 15, Crime Prevention and Corrections
Division 3, Department of Corrections

PETITIONER

Celia Huerta, Frederico Arredondo, Esther Corona,
Carol Huerta and J. Ibarra, T-00374.

AUTHORITY

Under authority established in Penal Code (PC) Section 5058, the Secretary may prescribe and amend regulations for the administration of prisons. PC Section 5054 vests the Secretary with the supervision, management, and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein.

CONTACT PERSON

Please direct any inquiries regarding this action to Timothy M. Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001, or telephone (916) 341-7390.

AVAILABILITY OF PETITION

The petition to amend regulations is available upon request directed to the Department's contact person.

SUMMARY OF PETITION

Petitioner requests the Department of Corrections and Rehabilitation (CDCR) amend a regulation in the California Code of Regulations (CCR), Title 15, Division 3. Specifically, Subsection 3173.1 regarding visitation restrictions with minors.

DEPARTMENT DECISION

The Secretary of the CDCR denies the petition to amend regulations in Title 15, Division 3, regarding visitation restrictions with minors.

The Petitioner requests that the restrictions imposed in Subsection 3173.1(b) on visitation between inmates incarcerated for sex crimes and minors who had not been the victims of the inmate's crime be removed. Petitioner contends that the restriction imposed by 3173.1(b) is neither mandated nor warranted by Penal Code 5054.2. Petitioner further contends that the regulation is outside the scope of authority conferred as mandated by Government Code Section 11342.1 in that the Secretary of the CDCR has impermissibly exceeded the authority by restricting any kind of visitation with any minor for inmates who have been convicted of the specific PC violations as listed in CCR 3173.1

The Petitioner contends that the purpose of PC Section 5054.2 is to protect child victims from further psychological or emotional damage. According to the petitioner, in the case where the minor is not the victim, there is no need for protection and should be exempted from visiting restrictions set forth in PC 5054.2. The petitioner contends that as long as the victim is protected, PC 5054.2 does not mandate any kind of restriction with minors for those inmates convicted of sex crimes against children.

The Petitioner further contends that CCR Section 3173.1 lacks the legal support in that it is contrary to PC Section 5054.2.

The Department contends that the CCR Title 15, Section 3173.1(b) does not conflict with the above referenced PC and/or GC Sections. CCR Section 3173.1(b) does not restrict all visitation between a minor who is not the victim and inmates convicted of specific PC violations listed in this Section. The limitation is in the type of visitation allowed under this Subsection. CCR Section 3173.1(b) states **"For inmates convicted of PC Section(s) 261, 264.1, 266c, 285, 286, 288, 288a, 288.5, or 289 when the victim is a minor, visitation with any minor who is not the victim of the crime shall be limited to non-contact status."** The Department contends that this restriction is intended to protect minor visitors from inmates who have been convicted of PC Sections which show an "intent to harm the child" or show a nexus to that harm. In the case of those inmates convicted of PC violations listed in 3173.1(b), the Department points out that these are the same PC violations noted in PC Section 5054.2 concerning visiting restrictions with the victim. Therefore the Department contends that contact visitation with a non-victim minor places the minor at substantial risk, as the inmate convicted of these crimes has shown an intent to harm minors.

The Department also contends that this regulation was properly promulgated within the parameters of the Administrative Procedures Act (APA) and was found to have met the requirements of this statute. This process consisted of a public comment period in which the de-

partment received approximately 300 public comments. Concerns similar to the petitioners request were received. The Department considered the comments and made the determination that it is the responsibility of the Department to evaluate risks and implement policy that will ensure the safety and security of inmates, staff, and visitors in the institutions, while encouraging a healthy visiting environment.

The Department contends that it has the ultimate responsibility to evaluate potential risks, analyze critical incidents occurring in the institutions, and implement policy that will ensure the safety and security of inmates, staff, and visitors in the institutions. Regretfully, the need to provide a safe environment for inmates, staff, adult and minor visitors, and the public as a whole, sometimes outweighs the individual wishes of an inmate.

Pursuant to CCR, Section 3084.1, any inmate may pursue a remedy through the Inmate Appeal process, which they can demonstrate as having an adverse effect upon their welfare.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE OF DECISION ON PETITION TO AMEND REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections Division 3, Department of Corrections

PETITIONER

James Myron, K-08153.

AUTHORITY

The authority granted by Government Code (GC) Section 12838.5 vests to the California Department of Corrections and Rehabilitation (CDCR) all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of the abolished Youth and Adult Correctional Agency, California Department of Corrections (CDC), Department of the Youth Authority, Commission on Correctional Peace Officer Standards and Training, Board of Corrections, and the State Commission on Juvenile Justice, Crime and Delinquency Prevention. Penal Code (PC) Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections refers to the Secretary of the CDCR. PC Section 5054 vests with the Secretary of the

CDCR the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein. PC Section 5055 provides that commencing July 1, 2005, all powers/duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. PC Section 5058 provides that the Director may prescribe and amend regulations for the administration of prisons.

CONTACT PERSON

Please direct any inquiries regarding this action to Timothy M. Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001.

AVAILABILITY OF PETITION

The petition to amend regulations is available upon request directed to the Department's contact person.

SUMMARY OF PETITION

Petitioner requests the Department of Corrections to amend regulations in the California Code of Regulations (CCR), Title 15, Division 3, Section 3141, regarding inmate confidential correspondence.

DEPARTMENT DECISION

The Director of Corrections and Rehabilitation denies the petition to amend regulations in Title 15, Division 3, Section 3141 of the CCR.

The Petitioner requests that the Department amend regulations that pertain to inmate confidential mail correspondence. Petitioner states that the Department's regulations concerning confidential mail fail to allow inmate's their constitutional right to correspond with members of the media. Petitioner also states that inmate's are not allowed to correspond in a confidential manner with court assigned mediators, prison monitors, special masters, law enforcement agencies or officials, District Attorneys, United States (US) Attorney General officials, wardens, associate wardens, custody captains, internal affairs officials, or College law school officials.

The Department contends that while inmates are not allowed to correspond confidentially with members of the media at this time, they are allowed to correspond with all of the other persons, departments, or agencies noted in this petition. For example, pursuant to Title 15,

Division 3, Section 3141(c)(3), all State officials having responsibility for the inmate's present custody would include wardens and other prison officials. This would extend to other law enforcement agencies if they had responsibility for an inmate's custody. Pursuant to Title 15, Division 3, Section 3141(c)(5), all state and federal judges and courts would extend to court assigned mediators, prison monitors, special masters, District Attorney's, and US Attorney General officials. Pursuant to Title 15, Division 3, Section 3141(c)(8), several legitimate legal service organizations are listed, but the list is not limiting. A determination of the legitimacy of a legal service organization would be made by an institution's Litigation Coordinator.

As has been noted, inmates are not allowed to correspond with members of the media at this time. The Department has determined that there is no legitimate penological reason, and no constitutional mandate, for an inmate to be allowed to confidentially correspond with the media. The Department is currently in the process of revising regulations concerning the processing of inmate mail. The revised mail regulations will be made available for public review and comment before adoption in the near future. The Department further contends that the subject of inmate correspondence and contact between inmates and the media is a matter of continued public interest.

The Department contends that Title 15, Division 3, Section 3141 of the CCR, regarding confidential mail is currently sufficient to ensure that inmates have the ability to confidentially correspond with appropriate individuals or agencies.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE OF DECISION ON PETITION TO AMEND REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections Division 3, Department of Corrections

PETITIONER

James Myron, K-08151

AUTHORITY

The authority granted by Government Code (GC) Section 12838.5 vests to the California Department of Corrections and Rehabilitation (CDCR) all the powers,

functions, duties, responsibilities, obligations, liabilities, and jurisdiction of the abolished Youth and Adult Correctional Agency, California Department of Corrections (CDC), Department of the Youth Authority, Commission on Correctional Peace Officer Standards and Training, Board of Corrections, and the State Commission on Juvenile Justice, Crime and Delinquency Prevention. Penal Code (PC) Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections refers to the Secretary of the CDCR. PC Section 5054 vests with the Secretary of the CDCR, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein. PC Section 5055 provides that commencing July 1, 2005, all powers/duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. PC Section 5058 provides that the Director may prescribe and amend regulations for the administration of prisons.

CONTACT PERSON

Please direct any inquiries regarding this action to Timothy M. Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001.

AVAILABILITY OF PETITION

The petition to amend regulations is available upon request directed to the Department's contact person.

SUMMARY OF PETITION

Petitioner requests the Department of Corrections to amend regulations in the California Code of Regulations (CCR), Title 15, Division 3, Section 3320(a), regarding the inmate disciplinary process.

DEPARTMENT DECISION

The Director of Corrections and Rehabilitation denies the petition to amend regulations in Title 15, Division 3, Section 3320(a) of the CCR.

The Petitioner requests that the Department amend regulations such that the Department's inmate disciplinary process would parallel California's criminal justice system with respect to plea bargaining. The Petitioner states that the plea bargain system expedites the judicial process and would provide a significant cost savings by successfully resolving criminal charges

without the cost of an administrative hearing. Petitioner further states that the Department has no provision for such speedy and cost effective means of handling prison disciplinary proceedings, resulting in all inmates being subjected to time consuming and costly prison disciplinary processes even if an inmate wanted to plead guilty.

The Department contends that pursuant to Section 2079 of the Penal Code (PC), it is the duty of the wardens to supervise the government, discipline and policy of the prison, and to enforce all orders and regulations. By its very nature, the prison setting is not designed to emulate all aspects of society, and in particular the justice system. The prison system consists of a population that is entirely comprised of individuals that have been convicted of a crime. The most important function of the prison staff is to maintain the safety and security of the prison, for the benefit of the inmates contained therein, staff, and the general public.

Inmate discipline is a critical component in the day-to-day operation of a prison. It is a well known fact that effective inmate discipline is best achieved through behavioral modification. The California State Legislature has for many years developed legislation that is designed to achieve behavioral modification through the use of denial of time credits. For example, PC Sections 2931 and 2932 set forth the legal basis for both the reduction of an inmate's term for good behavior, and the denial of time credits for inappropriate behavior. It has been determined that the most effective means by which inmate discipline can be achieved and maintained is by this method, not a method of an inmate's choosing. The Department considers such crimes as the production of prison "pruno" to be of a very serious nature with the potential to disrupt the prison setting. It is not reasonable to expect that the mere punishment of washing pots and pans would be a sufficient deterrent to effect good behavioral modification.

The Department acknowledges that the inmate disciplinary hearing process is an administrative process, although some crimes committed in a prison setting may extend themselves to include felony prosecution by the District Attorney. The Department contends that it has carefully developed this administrative hearing process to ensure that all legal protection possible can be extended to an inmate involved in the process. For example, the United States Supreme Court, in *Enomoto v. Wright*, 434 U.S. 1052 (1978), set forth constitutionally protected safeguards, such as allowing an inmate to have witnesses to testify on his behalf, that the Department adheres to very carefully. Following these due process safeguards may require time, such as in the case when an investigation is warranted.

The Department contends that Title 15, Division 3, Section 3320(a) of the CCR, regarding hearing proce-

dures and time limitations, is currently sufficient to ensure appropriate inmate discipline through behavioral modification.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

AIR RESOURCES BOARD

Urban Bus Engines and Fleet Rule for Transit Agencies

This regulatory action (1) mandates that all transit agencies operating in the South Coast Air Quality District (SCAQMD) follow the alternative-fuel compliance path and (2) aligns the California 2007 and subsequent model-year new urban bus engine standards with the equivalent model-year California heavy-duty truck-engine emission standards, but requires diesel path transit agencies with more than 30 urban buses with diesel engines not certified at or below 0.2 grams per brake horsepower-hour oxides of nitrogen (NOx) engine emission standard to mitigate the NOx emissions through retrofitting existing urban busses or transit fleet vehicles.

Title 13

California Code of Regulations

AMEND: 1956.1, 1956.8, 2023.1, 2023.4

Filed 09/07/06

Effective 10/07/06

Agency Contact: Alexa Malik (916) 322-4011

AIR RESOURCES BOARD

Portable Fuel Containers

In this regulatory action, the Air Resources Board adopts, amends, and repeals regulations pertaining to portable fuel containers and spouts, including new certification and test procedures.

Title 13

California Code of Regulations

ADOPT: 2467.8, 2467.9 AMEND: 2467, 2467.1, 2467.2, 2467.3, 2467.4, 2467.5, 2467.6, 2467.7, Incorporated Documents REPEAL: 2467.8, Incorporated Test Method 512

Filed 09/11/06
Effective 10/11/06
Agency Contact: Alexa Malik (916) 322-4011

BOARD OF CHIROPRACTIC EXAMINERS **Disciplinary Guidelines**

This regulatory action revises the incorporated by reference document "Disciplinary Guidelines and Model Disciplinary Orders" to revise and update terminology, to establish new requirements for probationers, and to add additional terms and conditions to the list of disciplinary options.

Title 16
California Code of Regulations
AMEND: 384
Filed 09/12/06
Effective 10/12/06
Agency Contact:
Michael E. Hamilton (916) 263-5373

BOARD OF EQUALIZATION **Two-Party Exchange**

This action conforms state fuel tax law with federal law permitting a refiner or position holder who delivers either motor vehicle or diesel fuel to a receiving supplier in a two party exchange to structure the transaction so that the receiving supplier will be primarily responsible for reporting the exchange and paying the fuel tax to the state.

Title 18
California Code of Regulations
ADOPT: 1125, 1423 AMEND: 1123, 1420
Filed 09/08/06
Effective 10/08/06
Agency Contact: Diane G. Olson (916) 322-9569

CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE **Conflict of Interest Code**

The California Institute for Regenerative Medicine is adopting its conflict of interest code found at title 17, section 100000, California Code of Regulations. The aforementioned was approved for filing by the Fair Political Practices Commission on May 18, 2006; the Fair Political Practices Commission extended this approval on August 3, 2006.

Title 17
California Code of Regulations
ADOPT: 100000
Filed 09/11/06
Effective 10/11/06
Agency Contact: C. Scott Tocher (415) 396-9136

DEPARTMENT OF FOOD AND AGRICULTURE **Peach Fruit Fly Eradication Area**

In this emergency regulatory action, the Department of Food and Agriculture amends its regulation pertaining to the "peach fruit fly eradication area" to include Los Angeles County as an eradication area.

Title 3
California Code of Regulations
AMEND: 3591.12(a)
Filed 09/12/06
Effective 09/12/06
Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF FOOD AND AGRICULTURE **Diaprepes Root Weevil Interior Quarantine**

This certification of former emergency regulatory action adds the University City area of La Jolla, California to the quarantine area for this pest at 3 CCR § 3433(b)(3)(A). This section was subsequently amended to include more of the area when more bugs were found close to the border of the current quarantine area. (OAL File 06-0822-01E) Neither the subsequent amendment nor several subsequent quarantine areas (3 CCR § 3433(b)(3)(B-E)) are included in this certification.

Title 3
California Code of Regulations
AMEND: 3433(b)
Filed 09/07/06
Effective 09/07/06
Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF FOOD AND AGRICULTURE **Mediterranean Fruit Fly Interior Quarantine**

This emergency regulatory action repeals the Mediterranean Fruit Fly Interior Quarantine currently in effect in 3 Cal. Code Regs. Section 3406(b) for the San Jose area of Santa Clara County.

Title 3
California Code of Regulations
AMEND: 3406(b)
Filed 09/12/06
Effective 09/12/06
Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF FOOD AND AGRICULTURE **Oriental Fruit Fly Interior Quarantine**

This emergency regulatory action establishes a quarantine area for Oriental fruit fly in the Rialto area of San Bernardino County covering approximately 65 square miles.

Title 3
California Code of Regulations
AMEND: 3423(b)
Filed 09/08/06
Effective 09/08/06
Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF MANAGED HEALTH CARE
Public Meetings and Hearings

DMHC is adopting Title 28, section 1002.4 to establish criteria for public meetings or hearings to ensure that the public is aware of the factors utilized by the Director when determining to hold a public meeting or hearing. The regulation also establishes how a member of the public can request a public meeting or hearing. This regulation is designed to make the DMHC's actions more transparent to the public. The requirements applicable to the determination by the Director in making a decision whether to hold a public meeting or hearing is detailed in this new regulation.

Title 28
California Code of Regulations
ADOPT: 1002.4
Filed 09/11/06
Effective 10/11/06
Agency Contact: Phoenix R. Vigil (916) 445-4078

DEPARTMENT OF SOCIAL SERVICES
CalWORKS Program Changes

This action is the Certificate of Compliance filing making permanent the prior emergency amendment of provisions governing the CalWORKS program in order to comply with changes mandated by SB1104 (Chap. 229, Stats. 2004) and SB 68 (Chap. 78, Stats. 2005). The prior emergency files related to this Certificate of Compliance filing are OAL file numbers 05-1121-01E and 06-0324-01ER.

Title MPP
California Code of Regulations
AMEND: 11-501, 42-302, 42-701, 42-711, 42-712, 42-713, 42-715, 42-716, 42-718, 42-719, 42-720, 42-721, 42-722, 42-802, 42-1009, 42-1010, 44-111, 63-407 REPEAL: 42-710
Filed 09/07/06
Effective 09/07/06
Agency Contact:
Anthony J. Velasquez (916) 657-2586

DEPARTMENT OF TOXIC SUBSTANCES
CONTROL
Secondary Containment

This rulemaking simplifies and updates requirements relating to tank systems holding waste that may be identified as hazardous in the future. This action deletes the outdated deadlines and substitutes new dates that are related to identification of the waste as hazardous.

tified as hazardous in the future. This action deletes the outdated deadlines and substitutes new dates that are related to identification of the waste as hazardous.

Title 22
California Code of Regulations
AMEND: 66264.191, 66264.193, 66265.191, 66265.193
Filed 09/08/06
Effective 10/08/06
Agency Contact: Nicole Sotak (916) 327-4508

PUBLIC UTILITIES COMMISSION
Amendments to Rules of Practice and Procedure

This regulatory action updates and reorganizes the California Public Utilities Commission's entire "Chapter 1, Rules of Practice and Procedure". This action is subject to a limited review by the Office of Administrative Law pursuant to the provisions of Government Code section 11351 and Public Utilities Code section 311(h).

Title 20
California Code of Regulations
AMEND: 1, 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 2, 2.1, 2.2, 2.3, 2.3.1, 2.4, 2.5, 2.6, 2.7, 3, 3.1, 3.2, 3.3, 3.4, 4, 5, 6, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 7, 7.1, 8, 8.1, 8.2, 9, 10, 10.1, 11, 12, 13, 13.1, 13.2, 14, 14.1, 14.2, 14.3, 14.4, 14.5, 14.6, 14.7, 15, 15.1, 16, 17, 17.1, 17.2, 17.3, 18, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 42.1, 42.2, 43.1, 43.2, 43.3, 43.4, 43.5, 43.6, 43.7, 43.8, 44, 44.1, 44.2, 44.3, 44.4, 44.5, 44.6, 45, 46, 47, 48, 49, 50, 51, 51.1, 51.2, 51.3, 51.4, 51.5, 51.6, 51.7, 51.8, 51.9, 51.10, 52, 53, 54, 55, 56, 57, 58, 59, 59.1, 59.2, 60, 61, 61.1, 62, 63, 63.1, 63.2, 63.3, 63.4, 63.5, 63.6, 63.7, 63.8, 63.9, 63.10, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 74.1, 74.2, 74.3, 74.4, 74.5, 74.6, 74.7, 75, 76, 76.1, 76.2, 76.3, 76.4, 76.5, 76.6, 77, 77.1, 77.2, 77.3, 77.4, 77.5, 77.6, 77.7, 78, 79, 80, 81, 82, 83, 84, 85, 86, 86.1, 86.2, 86.3, 86.4, 86.5, 86.6, 86.7, 87, 88
Filed 09/13/06
Effective 09/13/06
Agency Contact: Hallie Yacknin (415) 703-1675

RESPIRATORY CARE BOARD
Citation and Fine — Unlicensed Personnel

The adoption of 16 Cal. Code Regs. § 1399.391 allows the issuance of a citation to an unlicensed person or the employer of an unlicensed person who is acting in the capacity of a respiratory care practitioner. An administrative fine is included as well as an order of abatement. The employer or unlicensed person may contest the citation.

Title 16

California Code of Regulations

ADOPT: 1399.391

Filed 09/07/06

Effective 10/07/06

Agency Contact:

Liane Zimmerman (916) 323-9983

SECRETARY OF STATE

Preclearance and Expedited Filings

The amendments to Title 2 sections 21904 and 21905 are designed to expand the preclearance and expedited filing of documents services provided by SOS to include all documents filed pursuant to the California Corporations Code, the California Financial Code, or the California Insurance Code. Currently preclearance and expedited filing is only available for specified corporate documents filed pursuant to a limited number of California Corporations Code sections. These amendments will open up these services to many other business entities.

Title 2

California Code of Regulations

AMEND: 21904, 21905

Filed 09/07/06

Effective 09/07/06

Agency Contact: Tony Miller (916) 653-0296

STATE WATER RESOURCES CONTROL BOARD

San Francisco Bay Water Quality Control Plan

The San Francisco Bay Regional Water Quality Control Board (Regional Board) adopted Resolution R2-2005-0046 (Basin Plan) on September 21, 2005, which amended the Water Quality Control Plan for the San Francisco Bay Region (Basin Plan) by establishing a program (a Total Maximum Daily Load (TMDL)) to control pathogens in the Tomales Bay watershed. The TMDL sets numeric targets, allocates responsibility among the sources for meeting those targets, and establishes an implementation plan to ensure that all segments of Tomales Bay and its major tributaries (Lagunitas Creek, Walker Creek, and Olema Creek) attain applicable bacteriological water quality standards established in the Basin Plan to protect and support the beneficial uses.

Title 23

California Code of Regulations

ADOPT: 3916

Filed 09/13/06

Effective

Agency Contact: Joanna Jensen (916) 657-1036

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN APRIL 12, 2006 TO
SEPTEMBER 13, 2006**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

09/07/06 AMEND: 21904, 21905
09/05/06 AMEND: 1859.2, 1859.76, 1859.83, 1859.163.1
08/23/06 AMEND: 1181.4
08/21/06 AMEND: 1859.2, 1859.70.1, 1859.71.3, 1859.78.5
08/15/06 ADOPT: 20108, 20108.1, 20108.12, 20108.15, 20108.18, 20108.20, 20108.25, 20108.30, 20108.35, 20108.36, 20108.37, 20108.38, 20108.40, 20108.45, 20108.50, 20108.51, 20108.55, 20108.60, 20108.65, 20108.70, 20108.75, 20108.80
08/11/06 AMEND: 1859.2, 1859.40, 1859.51, 1859.70, 1859.93.1, 1859.95, 1859.147, 1859.202, 1866
07/24/06 AMEND: 18944
07/06/06 AMEND: 575.1, 575.2
06/20/06 AMEND: 18537
06/08/06 AMEND: 18526
05/26/06 ADOPT: 18438.5 AMEND: 18438.8
05/25/06 AMEND: 18942
05/24/06 ADOPT: Div. 8, Ch. 111, Sec. 59560
05/24/06 AMEND: 433.1
05/17/06 ADOPT: 22610.1, 22610.2, 22610.3, 22610.4
05/15/06 AMEND: 1859.2, 1859.40, 1859.51, 1859.70, 1859.93.1, 1859.95, 1859.147, Form SAB 50-04
05/08/06 AMEND: 18537.1
04/24/06 AMEND: 20108.70, Division 7

Title 3

09/12/06 AMEND: 3591.12(a)
09/12/06 AMEND: 3406(b)
09/08/06 AMEND: 3423(b)
09/07/06 AMEND: 3433(b)
09/05/06 AMEND: 3406(b)
08/29/06 AMEND: 3433(b)
08/24/06 AMEND: 3433(b)

08/23/06	AMEND: 3591.12(a)	19817.1, 19826, 19826.1, 19836, 19851, 19853
08/17/06	AMEND: 3591.19(a)	
08/16/06	AMEND: 3433(b)	05/25/06 AMEND: 1074
08/15/06	AMEND: 3700(c)	05/16/06 ADOPT: 51025.5
08/15/06	AMEND: 3700(c)	05/15/06 ADOPT: 11987, 11987.1, 11987.2, 11987.3, 11987.4, 11987.5, 11987.6, 11987.7
08/10/06	AMEND: 3591.6(a)	
08/01/06	AMEND: 3591.6(a)	
08/01/06	AMEND: 3424(b)	05/12/06 AMEND: 19819, 19851
07/28/06	AMEND: 3591.2(a)	04/28/06 AMEND: 51026, 53206, 54024, 54100, 54616, 54700, 54706, 55005, 55160, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55403, 55404, 55512, 55522, 55530, 55605, 55675, 55753.5, 55753.7, 56000, 56050, 56062, 56200, 56201, 56202, 56204
07/26/06	AMEND: 3700(c)	
07/21/06	REPEAL: 1366	
07/19/06	ADOPT: 6310 AMEND: 6170	
07/18/06	ADOPT: 6960 AMEND: 6000	
07/17/06	AMEND: 3591.6(a)	
07/05/06	AMEND: 3591.6	
07/03/06	AMEND: 3589(a)	
06/28/06	AMEND: 3433(b)	Title 8
06/12/06	AMEND: 3433(b)	07/31/06 AMEND: 5154.1
05/23/06	ADOPT: 3424	07/28/06 AMEND: Subchapter 4, Appendix B, Plate B-1-a
05/23/06	ADOPT: 6580, 6582, 6584	07/27/06 ADOPT: 3395
05/19/06	AMEND: 3433(b)	07/19/06 ADOPT: 10004, 10005 AMEND: 10133.53, 10133.55
05/18/06	ADOPT: 1472.7.2 AMEND: 1472, 1472.4	07/18/06 AMEND: 3270
05/18/06	AMEND: 3591.12(a)	06/30/06 AMEND: 9793, 9795
05/11/06	AMEND: 3591.19	06/26/06 ADOPT: 6858 AMEND: 6505, 6533, 6551, 6552, 6755, 6845, 6657 REPEAL: 6846
04/28/06	AMEND: 1380.19, 1420.10	06/06/06 AMEND: 5155
04/27/06	AMEND: 3406(b)	05/25/06 AMEND: 4650
04/13/06	AMEND: 1446.4, 1454.10, 1462.10	04/19/06 AMEND: 3395
Title 4		04/17/06 AMEND: 2320.4(a)(3)
07/19/06	AMEND: 12358, 12359	Title 9
07/17/06	AMEND: 2240(e)	06/07/06 ADOPT: 10056, 10057
06/20/06	AMEND: 1472	05/24/06 ADOPT: 3400
06/01/06	AMEND: 8070(d), 8071(a)(9), 8072, 8073(c), 8074(b), 8076(c)(1)	05/19/06 ADOPT: 1810.100, 1810.110, 1810.200, 1810.201, 1810.202, 1810.203, 1810.203.5, 1810.204, 1810.205, 1810.205.1, 1810.205.2, 1810.206, 1810.207, 1810.208, 1810.209, 1810.210, 1810.211, 1810.212, 1810.213, 1810.214, 1810.214.1, 1810.215, 1810.216
05/18/06	ADOPT: 12358	04/19/06 AMEND: 10000, 10010, 10015, 10020, 10025, 10030, 10035, 10040, 10045, 10050, 10055, 10060, 10065, 10070, 10080, 10085, 10090, 10095, 10105, 10110, 10115, 10120, 10125, 10130, 10140, 10145, 10150, 10155, 10160, 10165, 10170, 10175, 10185, 10190, 10195
05/05/06	AMEND: 150	
Title 5		Title 10
08/30/06	ADOPT: 15566, 15567, 15568 REPEAL: 15569	08/29/06 AMEND: 2699.6600
08/15/06	AMEND: 1030.7, 1030.8	
07/31/06	ADOPT: 1043.2, 1043.4, 1043.6, 1043.8, 1043.10, 1047, 1048 AMEND: 1040, 1041, 1043, 1044 REPEAL: 1042, 1045, 1046	
07/25/06	ADOPT: 1207.1, 1207.2 AMEND: 1204.5	
07/21/06	ADOPT: 15566, 15567, 15568, 15569	
07/14/06	ADOPT: 51016.5, 55183	
06/12/06	ADOPT: 19833.5, 19833.6 AMEND: 19815, 19816, 19816.1, 19819, 19824, 19828.1, 19831	
06/09/06	ADOPT: 19827 AMEND: 19812, 19813, 19814, 19814.1, 19815, 19816, 19817,	

08/28/06	ADOPT: 803, 810, 810.1, 810.2, 810.3, 810.4, 810.5, 810.6, 810.7 AMEND: 800, 801, 802, 804, 806, 807	4032, 4034, 4035, 4036, 4037, 4038, 4039, 4040, 4041, 4045, 4047, 4048, 4049, 4050, 4051, 4052, 4053, 4054, 4055, 4056, 4057, 4058, 4059, 4060, 4061, 4062, 4063, 4064, 4065, 4066
08/08/06	ADOPT: 3583 AMEND: 3500, 3525, 3527, 3528, 3541, 3542, 3543, 3544, 3563, 3568, 3603, 3622, 3668, 3681, 3682, 3761 REPEAL: 3541	05/23/06 AMEND: 1002(c)
08/02/06	ADOPT: 2790.7	05/22/06 REPEAL: 2033
08/01/06	ADOPT: 5370, 5371, 5372, 5373, 5374, 5375, 5376, 5377	05/22/06 AMEND: 968.44, 968.46
07/28/06	AMEND: 2698.52(c), 2698.53(b), 2698.56(c)	05/12/06 AMEND: 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910
07/26/06	ADOPT: 5280, 5281, 5282, 5283, 5284, 5285, 5286	
07/24/06	ADOPT: 2498.6	Title 13
07/18/06	AMEND: 2498.5, 2498.6	09/11/06 ADOPT: 2467.8, 2467.9 AMEND: 2467, 2467.1, 2467.2, 2467.3, 2467.4, 2467.5, 2467.6, 2467.7, Incorporated Documents REPEAL: 2467.8, Incorporated Test Method 512
07/14/06	AMEND: 2632.5, 2632.8, 2632.11	09/07/06 AMEND: 1956.1, 1956.8, 2023.1, 2023.4
07/12/06	ADOPT: 2190.20, 2190.22, 2190.24	08/24/06 AMEND: 28.22
07/12/06	AMEND: 2498.4.9	07/28/06 AMEND: 154.00
07/12/06	AMEND: 2697.6	06/30/06 ADOPT: 85.00, 85.02, 85.04, 85.06, 85.08
07/10/06	ADOPT: 2509.21	06/29/06 AMEND: 345.16
06/30/06	ADOPT: 2194.9, 2194.10, 2194.11, 2194.12, 2194.13, 2194.14, 2194.15, 2194.16, 2194.17	06/16/06 AMEND: 2023.4
06/19/06	AMEND: 2318.6, 2353.1, 2354	06/15/06 AMEND: 1239
06/05/06	AMEND: 3528	05/22/06 ADOPT: 86500, 86501
06/01/06	ADOPT: 2695.1(g), 2695.14 AMEND: 2695.1, 2695.2, 2695.7, 2695.8, 2695.9, 2695.10, 2695.12	05/22/06 AMEND: 425.01
05/25/06	ADOPT: 2188.23, 2188.24, 2188.83 AMEND: 2186.1, 2188.2, 2188.6, 2188.8	05/18/06 ADOPT: 550.20 AMEND: 551.11, 551.12
05/18/06	AMEND: 2498.6	05/02/06 ADOPT: 345.07 AMEND: 345.06
04/28/06	ADOPT: 2670.1, 2670.2, 2670.3, 2670.4, 2670.5, 2670.7, 2670.8, 2670.9, 2670.10, 2670.11, 2670.12, 2670.13, 2670.14, 2670.15, 2670.17, 2670.18, 2670.19, 2670.20, 2670.21, 2670.22, 2670.23, 2670.24	Title 14
04/20/06	AMEND: 2498.5	08/31/06 AMEND: 27.80
04/18/06	AMEND: 2498.4.9	08/11/06 AMEND: 1261
04/18/06	AMEND: 2498.4.9	08/11/06 AMEND: 7.50
Title 11		08/04/06 ADOPT: 701, 702 AMEND: 1.74, 27.15, 27.67, 478.1, 551, 601, 708
08/16/06	ADOPT: 1084	07/31/06 ADOPT: 4970.49, 4970.50, 4970.51, 4970.52, 4970.53, 4970.54, 4970.55, 4970.56, 4970.57, 4970.58, 4970.59, 4970.60, 4970.61, 4970.62, 4970.63, 4970.64, 4970.65, 4970.66, 4970.67, 4970.68, 4970.69, 4970.70, 4970.71, 4970.72
07/27/06	AMEND: 1001, 1005, 1008, 1011, 1014, 1015, 1018, 1052, 1053, 1055, 1056, 1081 and Procedures D-1, D-2, D-10 E-1, F-1, and F-6	07/31/06 ADOPT: 4970, 4970.02, 4970.03, 4970.04, 4970.05, 4970.06, 4970.07, 4970.08, 4970.09, 4970.10, 4970.11, 4970.12, 4970.13, 4970.14, 4970.15, 4970.16, 4970.17, 4970.18, 4970.19, 4970.20, 4970.21 AMEND: 4970.00, 4970.01 REPEAL: 4970.02, 4970.03, 4970.04
07/12/06	AMEND: 999.2	07/28/06 AMEND: 15411
06/28/06	ADOPT: 4400(II), 4400(mm), 4401.1, 4406 AMEND: 4440.3 REPEAL: 4400(I), 4406	07/28/06 ADOPT: 7.50(b)(178)
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